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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,957	10/12/2000	David Murray Melrose	31060:800US01	7844

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EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/13/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/689,957

Applicant(s)

MELROSE

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-42, 47, 48, 51-54 and 64-80 is/are pending in the application.
- 4a) Of the above claim(s) 69 and 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-42, 47, 48, 51-54, 64-68 and 71-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Drawings

The drawings objection from the previous office action has been withdrawn. As noted by applicant the structure is shown in Fig. 2, 3, and 5.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said flex panel including a pair of opposing columns, said columns being located at said opposing sides" and "including two or more flex panel portions, said flex panel portions being located at opposing sides of said columns" must be shown or the feature(s) canceled from the claim(s). The term "column" is not found in the disclosure and is not noted in the drawings. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The proposed drawing correction has been disapproved. There is no support for the showing of Fig. 4 d. There is no support for the four pressure steps seen in Fig. 11. No mention of reference numerals 10 and 11 is found in the disclosure.

Claim Rejections - 35 USC § 112

The 112first paragraph rejections made in the previous office action with respect to claims 29, 69, and 70 have been withdrawn. Applicant noted by applicant the structure

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of claims 69 and 70 are seen in Fig. 8 that represents a non-elected embodiment.

Therefore these claims are withdrawn from consideration.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 37-42, 48, 64, 68, 74-76, 77, 78, and 79 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 37, 48, 64, 68, and 77 it has not been adequately disclosed that the "the projecting portion to reverse relative to the direction of its projection and in the same direction parallel to the reversal of the imitator portion". There is no support for the one occurring parallel to the other. Regarding claim 74, it has not been adequately disclosed that the "initiator end resides in a first plane which is normal to the longitudinal axis of the container". Regarding claim 78, there is no support for the term column in the disclosure. This is a new matter rejection. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 37-42, 48, 64, 68, 74-76, 77, 78, and 79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 37, 48, 64, 68, and 77 it has not been adequately disclosed that the "the projecting portion to reverse relative to the direction of its projection and in the same direction parallel to the reversal of the imitator portion". There is no support for the one occurring parallel to the other. Regarding claim 74, it has not been adequately disclosed that the "initiator end resides in a first plane which is normal to the longitudinal axis of the container". It is not clear what is being claimed. Regarding claim 78, the terms columns is not supported by the disclosure. It is not clear what the term columns require. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 27-44, 47, 48, 51-54, and 64-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Vaillencourt et al (US 5,341,946). Regarding claim 27, see Fig. 3, 7, and 9, where 43 are the vacuum panels are have a portion that extends away from the plane of a lesser extent closer to 43b and to a greater extent closer to 43a. The panels invert as seen in Fig. 9. Regarding claim 28, the flexure region projects outwardly in a transverse direction relative to said longitudinal axis. Regarding claim 29, the flexure region moves to an inward position so that its outward curvature lessens. Regarding claim 30, the initiator merges smoothly with the flexure region. The regions vary in outward extent as seen in Fig. 3. Regarding claim 31, see Fig. 3. Regarding claim 32 and 33, see Fig. 4, where the outward extent varies transversely of panel 43, which includes the flexure region and the initiator region. Regarding claim 34, see Fig. 9, where the extension is inward after inversion. Regarding claim 35 and 36, see Fig. 9, where the regions invert. Regarding claim 37, see above discussion. Regarding claim 38, see Fig. 9. Regarding claim 39, see Fig. 3 where the projection is shown as outward. Regarding claim 40, see Figs. 3 and 4 where the panel is substantially arcuate since it has curved areas. Regarding claim 41, the initiator has regions of minimal projection relative to the projection portion as seen in Figs. 3 and 9. Regarding claim 42, the areas around the panels 43 and 44 will allow for some outward movement due to an increase in pressure. Regarding claim 47 and 48, see Fig. 9 where the

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movement is progressive. The substantially inflexible regions are the columns surrounding the flex panels. Regarding claims 52-54 see Figs. 3 and 4, the initiator and the flexure regions are substantially arcuate since each region has curved portions. Regarding claims 64, 65, and 68, the panel projects transverse to the axis. There is a portion of the flexure region that is displaced from a region of the initiator region where each has a different curvature. Regarding claim 66, there is more than one panel. Regarding claim 67, the panels are spaced apart by land areas as seen in Fig. 1 as 38.

Claims 27-42, 47, 48, 51-54, 64-68, and 71-80 are rejected under 35 U.S.C. 102(e) as being anticipated by Krishnakumar et al (US 5,971,184). Regarding claims 27, 37, 45, 47, 48, 64, 65, and 68, see Figs. 1-7, where the panel 56 is shown which is outward and then inverts inward. The area around the edge is the initiator and the center is the flexure. The initiator does not extend outward as much as the flexure. The flexure and the initiator regions curve in both the transverse and the longitudinal directions where the curvature of the initiator is less than that of the flexure. The container is bi-axially oriented, made for hot fill, and blow molded. The area around the panel is substantially inflexible as seen in Fig. 4 as item 52. This part 52 does not move during the change. The panels will respond gradually to the change in pressure since the containers cool gradually and the pressure change is gradual. See Fig. 4, where the progressive movement is shown. Regarding claim 29, the curvature of the flexure region decreases as you pass the center of the panel. The initiator panel surrounds the flexure panel. Regarding claim 69, as it is best understood, the area of the initiator that joins 54 as seen in Fig. 4, is flattened. This extends between the substantially inflexible

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regions 52. This occurs on all sides of the panels. Moreover, there are inflexible areas on all sides of the panels. Regarding claim 42, since the area around the panel move inward an increase in pressure will cause them to move outward. Regarding claim claims 71-80, see the discussions of the previous claims above.

Claims 27-42, 47, 48, 51-54, 64-68, and 71-80 are rejected under 35 U.S.C. 102(b) as being anticipated by Weckman (US 4,387,816). Regarding claim claims, 27, 37, 47, 48, 64, 65, 68, 71-73, 77, and 80, see Figs. 5-9, where the claimed structure is shown. Fig. 5 specifically, the initiator region is located at the top of panel near lead line 92. The flexure region is located towards the bottom of the panel. There are different curvatures displaced from each other. The panel is capable of inverting due to the hinges 92. See Col. 6, lines 45 and 46 where it is stated that the panels collapse slowly inwardly.

Response to Arguments

Applicant's arguments filed 11/24/03 have been fully considered but they are not persuasive. Applicant argues with respect to the reference to Krishnakumar et al '184 that the bottle cannot function is a gradual manner. This is incorrect. Fig. 4 shows at least two positions 56' and 56"" which are in response to vacuum. This satisfies the claims. As seen in Fig. 6, there are portions of the panel that are spaced or displaced from each other that have different curvatures. There is a portion of the panel that is towards and end of the panel that extends less than a portion of the panel that is towards the other end of the container.

With respect to the Vaillencourt et al '946 reference, Fig. 9 shows progressive movement as well. Moreover, the container is capable of gradual movement upon gradual increase in vacuum there are portions of the panel that are spaced or displaced from each other that have different curvatures. As seen in Figs. 1-3, and 9, there is a portion of the panel that is towards and end of the panel that extends less than a portion of the panel that is towards the other end of the container.

Applicant's arguments with respect to claims 27-42, 47, 48, 51-54, 64-80 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dulmaine et al teaches a pressure panel with a gradual response.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

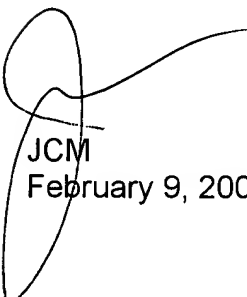
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

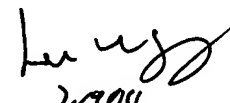
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



JCM
February 9, 2004



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